

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

**UNITED STATES OF AMERICA,
Plaintiff,**

Vs.

Cr. No.: 1:19-cr-10040-JDB-1

**JEFFREY YOUNG,
Defendant.**

AMENDED APPEAL

COMES NOW the Defendant, Jeffrey W. Young, Jr., by and through his attorney of record, Claiborne H. Ferguson, and files this Amended Appeal.

It is argued that the Magistrate Judge's order is clearly erroneous or contrary to law for the following reasons:

1. That the Order states that there are no cases of COVID-19 at the West Tennessee Detention Facility. (PageID 2507). This is clearly erroneous. Clearly the virus was already in the population at WTDF. It has been determined that the staff at the WTDF was not even testing for COVID-19 at the time they were saying there were no cases of the illness at the facility. The facility is clearly unable to stop the spread of the virus within its walls.
2. The Order states that WTDF is taking steps to prevent the risk of Covid-19 invading the facility. Id. Clearly this is erroneous and/or futile. It clearly demonstrates a fundamental misunderstanding of the risk to jail populations in general, and

immunosuppressed person specifically. This is contrary to the affidavits submitted in support of this request.

3. The Order is contrary to the vast weight of the cases cite within it that provided for release in similar situations. This is clearly erroneous or contrary to law. See Generally, PageID 2509-10.
4. The Order is clearly erroneous and/or contrary to law in that it fails to consider 18 U.S.C. § 3142(i) considerations that this deadly virous is clearly the “compelling reason” that the statute provides for post-detention modification of detention orders. PageID 2510.
5. The reliance of *Martin* to deny release was clearly erroneous and contrary to law as Martin was denied release based on his extensive criminal history and prior violation of release. None of those factors are present in this case. In fact, the reason the Court most likely denied relief (e.g., the rape video) was incomplete and as presented to the Court, created an impression that the full video dispels. PageID 2510.
6. The Order is clearly erroneous and/or contrary to law in that it was based on direction to the Assistant District Attorneys that have since been reversed. Just last week Attorney General Barr sent out new guidelines to reduce the venerable populations in pre-trial detention.
7. The Order is clearly erroneous and contrary to law with it holds that “Congress has not, as of yet, specifically authorized the judiciary to release “high risk” detainees or otherwise confront this potential issue. Therefore, I am constrained by the Bail Reform Act, 18 U.S.C. § 3141, et seq., and my analysis starts and ends

with the statute.” PagID 2511. Clearly this is incorrect. See, Paragraph 4 above regarding § 3142. The federal bail statutes do not give judges blanket discretion in setting bail. Rather, 18 U.S.C. § 3142(g) includes broad factors including the nature of the offense, the weight of the evidence, the history and characteristics of the defendant, and the danger the defendant would pose to others if released. An ongoing pandemic does not fit neatly into any of these categories. But, judges are permitted to consider the physical and mental condition of the defendant. See, 18 USC 1342(g)(3)(A). Thus, a defendant that is particularly at risk for complications from COVID-19 infection can ask that a judge consider that factor when making a determination on bail.¹ Further the failure to consider this a “compelling reason” for release is erroneous.

8. The Magistrate stated in the Order “... home detention would not preclude him from potentially engaging in threatening behavior through Facebook, text messages, or other electronic mediums” and this is clearly erroneous and/or contrary to law as the Court is empowered and pretrial available to enforce whatever restrictions are needed to protect the public. PageID 2512. Furthermore, considering mean Facebook posts against a potential death sentence is unreasonable, erroneous and contrary to law. The only way the Government could get a death sentence out of this indictment is to oppose this release. The potential punishment is greater than that penalty the crime carries.

¹ The Center for Disease Control has expressed that high-risk individuals include those over 65 years old; those with a condition that affects their lungs, heart, kidney, immune system; those with diabetes or severe obesity; or those who have other serious chronic medical conditions. See "Groups at Higher Risk for Severe Illness," CDC.gov, available here. (last visited Apr. 8, 2020).

9. The Magistrate stated in the Order “Additionally, the Government has described the various precautions WTDF has taken to prevent the spread of COVID-19 in the facility.” PageID 2512. This is clearly erroneous and/or contrary to law as they have not stopped the spread, could not stop the spread and it is only a matter of time now until WTDF has its first fatality.
10. The Magistrate stated in the Order “there has been no proof that COVID-19 has been confirmed in the facility.” Simply not true. Also, erroneous as you can’t have “proof” of an infection that the facility wasn’t even testing for at the time.

Counsel submits the preceding ten grounds as a showing why the Magistrate Judge’s Order is clearly erroneous and/or contrary to law. Based on the fact that the WTDF is currently suffering from infections form the COVID-19 virus, Counsel requests an immediate release of Jeffrey Young until such time a hearing can be conducted on this Appeal.

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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that a true and exact copy of the foregoing document has been served upon all concerned parties, via the Court's electronic filing system, this the 13th day of April 2020.

s/Claiborne H. Ferguson
CLAIBORNE H. FERGUSON